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THE RELATIONS OF THE CITY AND THE STATE OF NEW YORK.

THE relations between the City and the State of New York have at all times been such that it is impossible to understand the political history of the city without studying the state government. There have been changes, even of the most fundamental kind, in the character of these relations; but there has been no time from the first settlement of the province to the present day when the city was not bound to the state by the closest ties. The fundamental law of the city, known as its charter, has always been embodied in acts of the provincial or state authorities, at whose hands it has been subject to change at any time. This has been and is still the legal status of the city. In the powers and privileges recognized or conferred in this fundamental law lies the "right of the city." The officers to be chosen to administer the local government are designated in the charter, and their powers and official tenure depend upon it. In connection with the offices arises what is meant by the "right of the citizens." Here an important change was effected by the amendments to the constitution of the state made in the year 1821, and supplemented by the amendments of 1826 and 1834. Under the earlier charters the appointment and tenure of the city officials were controlled by state officers. These amendments to the constitution finally lodged this control in the local authorities and the inhabitants of the city.

Both the "right of the city" and the "right of the citizens" need full recognition to secure what is meant by local self-government. In its fullest sense, this has never been enjoyed by New York City. The "right of the city," after a process of gradual enlargement, attained almost complete recognition by the amendment of 1873, which first gave to the city an independent financial board. Since then, however, there has developed a tendency to interference by the legislature with the city's charter, not only by means of general amendments, but through the assumption of the local administration in many directions. This interference has been both direct, by creating new local offices to be filled by the state,[1] and indirect, by prescribing duties in detail for existing local officials, thus modifying the power conferred by the charter.

The "right of the citizens" is at the present time nearer than ever before to full recognition; there is now a general unanimity of opinion in favor of the right of the inhabitants to choose their own officials. Unless, however, these officials have duties prescribed by a general law and are then free to perform them without interference, but with full responsibility to the city, and even to the state, there is no true home-rule.

I.

Little need be said of the governmental forms introduced under the Dutch rule of the province, which was first interrupted in 1664, and finally overthrown ten years later. Because of internal dissensions, Indian wars and the indifference of the home government, the progress made in this period, either in numbers or in civilization, was unimportant. In 1664 the population of the entire province of New Netherland was only about 10,000, while twenty years later, under the vigorous rule of the English, it had increased to 50,000.

The Dutch depended for the success of their colony on a commercial corporation, the Dutch West India Company, which, in return for valuable trading privileges, had assumed

[1] For example, the Aqueduct Board, the Rapid Transit Commission and the Board of Electrical Control.

the obligation to "advance the peopling of those fruitful and unsettled parts, and do all that the service of these countries and the profit and increase of trade shall require." To the company, however, "the profit and increase of trade" was naturally the leading consideration, and the "peopling of those fruitful and unsettled parts" was of little significance except as it might contribute to the profit of trade. That a permanent and successful colony cannot be reared on such a foundation, has become a mere truism. Bancroft, in his *History of the United States*, well says:

> The province had no popular freedom, and therefore had no public spirit. In New England there were no poor; in New Netherland the poor were so numerous that it was difficult to provide for their relief. The one easily supported schools everywhere, and Latin schools in the larger villages; in the other, a Latin school lingered with difficulty through two years, and was discontinued. In the one, the people in the hour of danger defended themselves; in the other, the burden of protection was thrown upon the company, which claimed to be the absolute sovereign.

In the year 1626, when Peter Minuit, the earliest Dutch governor, arrived in the colony, his first act was the purchase of Manhattan Island from the Indians for sixty guilders (twenty-four dollars), and on this island he established the seat of government for the province of New Netherland. The form of government was very simple: all power was vested in the governor and the council which he appointed. The arbitrary conduct of Minuit and his successors caused much trouble in the colony, and when circumstances rendered necessary extraordinary demands for money and arms, the colonists were able to secure some concession of representation. A popular representative body, known as the "twelve men," met in the year 1641; and another, known as the "eight men," in 1644. The remonstrance of these bodies caused the recall of Governor Kieft, and his successor, Peter Stuyvesant, arrived in the colony in May, 1647, with instructions to grant liberal concessions to the inhabitants. But the new governor was no more inclined to be liberal than his predecessors, and com-

plaints to the home government continued. A form of local self-government having been bestowed in 1646 upon Breucklen (Brooklyn), a demand for similar privileges was made in behalf of Manhattan. The controversy that followed resulted in the concession of some rights of local independence to New Amsterdam, which, until then, had been completely under the control of the province. In April, 1652, the Dutch authorities authorized the establishment of a "burgher government" for New Amsterdam, to correspond in form as much as possible to the local governments in the fatherland. In the Dutch towns the *Vroedschap*, a great town council, consisting generally of inhabitants possessed of certain property, chose eight or nine good men, who in turn chose the burgomasters and *schepens*, while the *schout* was usually appointed by the count on nomination of the *Vroedschap*.[1] But Stuyvesant was not inclined to bestow even such a restricted form of representative government on New Amsterdam. He inaugurated the city government in February, 1653, by himself appointing the burgomasters and *schepens;* and he named as *schout* the Dutch West India Company's fiscal agent. Moreover, he insisted that the provincial government should continue "to make ordinances or publish particular interdicts even for New Amsterdam,"[2] and he took care that the power thus reserved should not become merely nominal.[3]

[1] The burgomasters and *schepens* had judicial authority, besides acting as a common council and making ordinances; the *schout* was a fiscal officer.

[2] Brodhead, I, 549.

[3] The activity of Stuyvesant and the provincial authorities is well shown in the Records of the City of New Amsterdam, edited by Henry B. Dawson, published privately in 1867. This volume contains the "Orders of the Director-General and Council of New Netherland" pertaining to the City of New Amsterdam for the years 1647 to 1659; and these orders will be found to deal with the minutest details of local interest. Thus, an act of January 23, 1648, provides that "from this time forth, no wooden or plated chimneys shall be permitted to be built in any houses between the Fort and the 'Fresh Water'" — the first fire limits of the city being thus between the Battery and the present site of the Tombs. Other acts pertain to the observance of the Sabbath and to matters of excise and police. It should be noted here that though the City Records from 1830 to date have been printed, the previous records are not yet published, and until they are published no satisfactory history of the municipality can be written.

The separation of the city from the province was thus first realized in 1653, but without any very definite concessions either as to form of government, or as to tenure or appointment of local officials. The struggle for greater privileges continued. In 1658 Stuyvesant yielded, to the extent of permitting the burgomasters and *schepens* to present twice the necessary number of names, out of which the governor selected their successors; and in 1660 he appointed a separate *schout* for the city.[1] But the result of all these concessions, as summed up by Bancroft, was that "the city had privileges, but not the citizens." Yet the first step towards local self-government had been taken, and it was never retraced. The direction it took was followed slowly, yet consistently, by the English authorities.

The legal relation of the city to the state (or province) suffered no change by the English conquest. The grant from the English king to the Duke of York conferred upon the latter governmental power, including the right to appoint all officials for the province and for all settlements within the province. The city remained absolutely dependent upon the province and its authorities. The charter granted by Governor Nicolls, June 12, 1665, like the grant of government under Dutch rule, was merely an ordinance of the governor of the province, subject to change at his discretion and embodying no protection to the city or its citizens against his arbitrary acts. This charter enlarged somewhat the privileges of the city, but diminished the right of the citizens. The appointment of mayor, aldermen and sheriff was vested absolutely in the governor, with no provision like that granted by Stuyvesant, for nominations by the retiring officers. But the charter defined more liberally the prerogatives of these officials, by conferring upon them

> full power to rule and govern as well all the inhabitants of this corporation as any strangers, according to the general law of this government, and such peculiar laws as are or shall be thought convenient and necessary for the good and welfare of this, his

[1] Brodhead, I, 640, 674.

Majesty's Corporation ; and also to appoint such other officers as they shall judge necessary for the orderly execution of justice.

English rule did not at first enlarge the liberties of the people of the province or the city. It was not until 1683 that the freeholders of the province were first assembled in a legislative body. On the 17th of October, in that year, this General Assembly met at Fort James in the City of New York. It remained in session about three weeks, and passed acts of the greatest importance, including a comprehensive bill of rights. Though the Assembly was convoked in compliance with instructions from the Duke of York, yet when he succeeded to the throne in 1685 he repented of his liberal concessions. Withholding the royal charter which he had signed but not yet delivered, and which recognized the right of the people to representation, he directed the governor to disregard the Assembly and to resume with his council the power to enact laws and to impose taxes. Not until 1691, after the revolution in England and after an uprising within the colony, known as the Leisler Revolution was representative government firmly established.

The struggle for greater liberties in behalf of the province yielded its fruits to the city. The second charter, known as the Dongan Charter, was a definite advance in the direction of local self-government, enlarging both the privileges of the city and the rights of the citizens. Governor Dongan had been instructed by the Duke of York to report upon the desirability of granting to the City of New York "immunity and privileges beyond what other parts of my territory do enjoy." In the course of his official investigation, the governor received a petition signed by the mayor and the aldermen, asking that certain "ancient customs, privileges and immunities" which had been granted them in 1665 should be confirmed by a charter from the Duke of York, with some additions, such as

the division of the corporation into six wards ; the annual election of aldermen and other officers by the freemen in each ward ; the local government of the city to be entrusted to them and to a mayor

and recorder to be annually appointed by the governor and council; that a sheriff, coroner and town-clerk be appointed in the same way; and that the corporation appoint their own treasurer.[1]

After prolonged discussion and delay, the complete charter was finally granted on April 22, 1686.[2]

The prerogatives of the local officials were enlarged by this charter, the grant of authority in the Nicoll's Charter being so extended as to authorize the common council

to make laws, orders, ordinances and constitutions in writing, and to add, alter and diminish or reform them from time to time, as to them shall seem necessary and convenient for the good rule, oversight, correction and government of the said city, and liberties of the same; of all the officers thereof, and for the several tradesmen, manufacturers, artificers, and of all other people and inhabitants of the said city, liberties and precincts aforesaid.

These powers would have given the city a position of great independence but for the restriction that the ordinances of the local authorities were to remain in force only three months, unless confirmed by the governor and council. This limitation reduced the local officials almost to the position of administrative agents. Yet it gave them the power to initiate local legislation, which was certain, because of their greater experience in local affairs, to ripen into ampler and ultimately full control.

The enlargement of local rights was greatest, however, in regard to the appointment and tenure of the local officials. We have seen that for a few years in the Dutch period there was a slight recognition of the "right of the citizens" in the appointment of burgomasters from names submitted by the outgoing officials, and that the Nicolls Charter had terminated this arrangement and left the appointment of all local officials absolutely with the governor. By the terms of the Dongan Charter the mayor, the sheriff, the recorder, the town clerk

[1] Hoffman, Rights of the Corporation, p. 21, notes 5 and 6.

[2] The original charter is in the City Hall. The parchment is as complete and the writing as legible as when written, and with it, but now detached, is the seal of the province.

and the clerk of the market were to be appointed annually by the lieutenant-governor or the commander-in-chief, with the advice of the council ; the high constable was to be appointed by the mayor, and the chamberlain was to be chosen annually by the mayor, aldermen and assistant aldermen. The aldermen, the assistant aldermen and the petty constables were to be chosen annually, one for each ward, "by a majority of voices of the inhabitants of each ward." In this electoral provision was a distinct recognition of the desirability of local self-government.

This charter, like all previous grants to the city, was not a royal charter, but emanated from the provincial authorities, and could be modified or abrogated by them without the consent of the people of the city. Its governmental arrangements expressed only expedients for local administration, not rights of the citizens. Yet this charter remained substantially unchanged until 1730 ; and within the field of local administration conceded to the officers of the city by its provisions, the provincial authorities left the local officials undisturbed. The legal right of the province was not exercised, and in its own narrow field the city was left to govern itself.

The Dongan Charter of 1686, then, is of special significance in two particulars : it marked out a certain domain for municipal activity, and it recognized to a limited extent a right in the inhabitants of the city to choose their own officials. Unfortunately, the political and charter history from 1686 does not show unvarying progress on the lines here laid down.

Following the Dongan Charter came the Montgomery Charter of 1730, which was granted directly by the king. It confirmed the previous charter, and enlarged the privileges of the municipality and increased the number of local officials, but without changing the relations of the city to the province. This charter remained the fundamental law of the city for nearly a century. The state constitution of 1777 merely confirmed its provisions, substituting for royal governor and royal council the state governor and the new council of appointment. This latter body consisted of the governor *ex officio*, and four

senators chosen annually by the Assembly. The new constitution provided that all officers whose appointment was not otherwise ordered should be appointed by the governor, with the advice and consent of the council of appointment; and accordingly the designation of the city officials hitherto appointed by the royal governor followed this method. The constitution of 1821 abolished this system and established finally the right of the inhabitants of the city to elect their own officials. It provided (art. iv, sec. 10) that "the mayors of all the cities in this state shall be appointed annually by the common councils of the respective cities," and (art. iv, sec. 8) that "the sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by electors once in every three years and as often as vacancies shall happen." The power of choosing municipal officers, except the recorder, was thus vested either in the voters of the city or in the common council elected by them.

Thus after nearly two centuries of struggle, with the Dutch governor, with the English authorities, and finally with their own chosen governors and legislature, the people of New York City had secured the right to choose their local officers. The abuses of the old system had become so evident that there was hardly a dissenting voice in the constitutional convention which inaugurated the new system. The historian Hammond, in his *Political History of the State of New York*, narrating the facts concerning the appointment of a mayor and a sheriff for the city, vividly portrays the evils of the old methods. DeWitt Clinton was mayor of New York City in the year 1814. The Tammany Society seemed to prefer the appointment of their Grand Sachem, Mr. John Ferguson.

> In the end Mr. Elmendorff, a member of the council [the Council of Appointment], was induced to give up his scruples about removing Mr. Clinton, and an arrangement was made by which Mr. Ferguson was appointed mayor, under an understanding that he was soon to be provided with an office [surveyor of the port] by the general government, when Mr. Radcliffe was to receive the office of mayor. Mr. Clinton was displaced, and the above arrangement was fully carried into effect.

The exigencies of state and national politics demanded not only that the mayor of New York City—a man whom the state and the city still honor for his patriotism—be removed, and that another be put in his place, but that that other should hold the office of mayor only long enough to be appointed to a federal office!

Of the appointment as sheriff of one Hubbard, a lawyer residing in Rensselaer county, Mr. Hammond writes:

> He was irregular in his habits and improvident in his expenditures. This man, in preference to many other worthy and respectable citizens of New York, was appointed sheriff of the city and county of New York, an office with ten thousand dollars a year, which eminently required a man intimately acquainted with the citizens and their circumstances. It was given by the Council to a member of their own body, of irregular habits, insolvent in his circumstances and a stranger to the city. It was a mere exercise of arbitrary power—an insult and outrage on the city of New York which ought to have disgraced the most despotic tyrant in the eastern world. How the city of New York could have been induced to submit peaceably to this most inexcusable act is a miracle. [Vol. I, p. 399.]

II.

The year 1821 thus inaugurates a new era in the city's history. The changes of that year secured to the city one of the two indispensable conditions of self-government: its officials were to be chosen within its own limits. The other condition had already been at least partly established, but the struggle to maintain and develop it is still going on.

The powers of the city officials were defined by the old charter of 1730, which had been extended but not fundamentally altered by legislative act; and though the state legislature had succeeded to the supreme rights of the English crown, and could amend and alter the charter at will, yet it allowed the charter to remain practically undisturbed until about the year 1850. While the legislature had possessed the power to appoint and remove the city's officials at its own pleasure, it had not felt obliged to enlarge or diminish their authority from year to

year, to suit the political exigencies of the moment or to gratify the whim or the spite of the state legislators. And for thirty years after the establishment of the new constitution, a scrupulous regard for the city's charter is shown by a study of the session laws. The charter was to the city what the constitution was to the state, and it was deemed essential that its terms should not be disturbed needlessly or frequently. The change in the attitude of the legislature was manifested slowly. As it became clear it was vigorously opposed, but the courts were obliged to hold that the legislature had the legal power to alter the city charter at will. This power had lain dormant and unused. It was at first invoked to protect the city against the misconduct of its own officials, but it was afterwards exercised in making changes without any real or even apparent cause.

During the twenty years from 1850 to 1870 the city did indeed seem to need protection from its self-chosen officials. The constitution of 1821, with the amendments in the following years, had abolished the property qualification for voters. Thus, at the same time that the city had first received the general right to elect its own officials, the constituency was increased. These changes coincided nearly in date with the opening of the Erie Canal, which increased the city's population from the interior of the state, and were followed by the beginning of ocean steam navigation and a large influx of foreign immigrants. The population of the city increased from 120,000 in 1820 to 515,000 in 1850, and the number of voters from 18,000 to 80,000, of whom more than one-half were foreign-born. The ultra-democratic wave which passed over the whole civilized world about the year 1848 left its impression on American state constitutions, and even on city charters. Amendments to the state constitution were made, abolishing all property qualifications for office-holding and for the suffrage, making judges of the highest appellate courts elective, and providing for the popular election of the governor's administrative aids — the secretary of state, the treasurer, the state engineer and even the state superintendent of prisons. At the same time New York City was to receive as well its share in the true

democratic sacrament. Amendments to the city charter provided that the heads of all city departments, except the Croton Aqueduct, who had previously been appointed by the common council and the mayor, were to be elected by the people — a system which, by creating as many little mayors as there were heads of departments, would have produced confusion under the most favorable conditions, and did in fact make chaos in the new metropolis. The history of the years from 1850 to 1870 furnishes beyond a doubt the saddest pages of our municipal record. Dishonesty, lawlessness and violence were the characteristic features of politics in those years. The boast of the present day, that New York City at least protects the life and the property of its citizens, could not then be made, for riots were frequent and crimes went unpunished.

The first interference of the legislature with the city seems to have been prompted by a desire to protect the citizens against the continuance of these evils. When Fernando Wood was mayor, and corruption and lawlessness were almost unrestrained, acts were passed by the legislature taking away from the city its control of the police and of the fire and park departments, and assigning their administration to state commissions. Until then changes in the city charter without the consent of the people of the city had been so rare that many believed these legislative acts unconstitutional.[1] The attorney-general of the state gave an opinion to that effect; the common council of the city denied the validity of the laws, and with the mayor refused to recognize them;[2] mass meetings were held denouncing them as revolutionary,

[1] As recently as 1851 the board of aldermen had made the following declaration (which, however, was not concurred in by the board of assistant aldermen): "*Whereas*, The charter of this city adopted in 1830 as amendatory of the royal charter, as well as the charter of 1849, were both adopted by a vote of the people; and *Whereas*, Any amendments to the charter made by the act of the legislature without the formal concurrence of the people might effect a forfeiture of all the chartered rights and franchises of the city: therefore *Resolved*, That in any amendment for which application should be made under resolution of the common council, provision should be made for submitting the same to the people for approval."

[2] Mayor Wood had forcibly ejected from the City Hall one of the governor's appointees, and the latter thereupon procured a warrant for the mayor's arrest for

and the utmost uncertainty and confusion prevailed until a decision of the court of appeals was rendered affirming their constitutionality.[1]

For a decade after the first interference the charter was still respected and changes were infrequent; but, under the inspiration of William M. Tweed, legislative action placed millions at the command of Tweed and his associates. An act of 1868, chapter 853, authorizing the comptroller to adjust claims against the city, and a modest little clause stowed away in the tax levy of 1870, authorizing the mayor (A. Oakey Hall), the comptroller (Richard B. Connolly) and the president of the board of supervisors (William M. Tweed) to audit all existing liabilities of the County of New York, were the means through which more than ten millions were secured by the Tweed Ring. Moreover, seeing the increasing wrath of the citizens of New York, this ring actually *purchased* a new charter, which contained many novel and desirable administrative features. It abolished the state commissions and gave to the mayor increased power and corresponding responsibilities. But it provided that the terms of all heads of departments should end five days after the passage of the charter, and conferred upon the mayor (A. Oakey Hall) the power to fill all these offices, not merely for the remainder of his term, but for a period of five years. This provision was unsound in principle as it was dishonest in motive. It was devised in order to perpetuate the power of the Tweed Ring, even if it should be overthrown by the people at the polls. In depriving the incoming mayor of the power to

assault and battery. Intrenched in the City Hall and surrounded by a considerable detachment of the municipal police, the mayor determined to resist service of the warrant. The result was a bloody encounter between the two factions.

[1] The People *ex rel.* Fernando Wood *vs.* Simon Draper *et al.*, 15 N. Y. The court held that "plenary power in the legislature for all purposes of civil government is the rule." The restrictions in the constitution are comparatively few, "and consist generally of those ancient limitations which are essential to constitutional government. It follows that it belongs to the legislature to arrange and distribute the administrative functions from such portions as it may deem suitable to local jurisdictions, and retaining other portions to be exercised by officers appointed by the central power, and changing the arrangement from time to time as convenience, the efficiency of the administration and the public good may seem to require."

select his own heads of departments, it made responsibility for corrupt administration impossible.

Just as the violence and fraud under Fernando Wood first led to legislative interference, so the exposure of the frauds of Tweed and his associates stimulated the legislature to renewed activity. The charter of 1870 was followed by a reform charter in 1873. The new charter has been changed from year to year by legislative acts, at first general in character, but later dealing with minute details, and passed even without any reference to the original charter which they amended. These acts were so numerous between 1873 and 1882 that the legislature deemed it wise to pass what is known as the Consolidation Act of 1882. It was not a new charter, but only a compilation of existing laws. By 1891 the special acts for New York City had again become so numerous that it became profitable to prepare an annotated edition of this Consolidation Act. In the preface to this work [1] the author declares that

> the legislature has during the nine years since 1882 passed a number of laws, which, although relating to New York City solely, do not in terms amend any of the sections of the Consolidation Act. Many of these laws, however, supersede, modify or affect the provisions of the Consolidation Act.

To sum up, then, we find that the Montgomery Charter of 1730 remained substantially unchanged for more than one hundred years. It was modified only to conform to the changed conditions arising from the greater area and increased population of the city. For four decades more the session laws show only reasonable special legislation for the city, with the exception of the acts passed during the years from 1857 to 1860, in the administration of Mayor Wood. The legislature of 1830, for example, made only two changes in the charter ;[2] it passed some general acts for the city ;[3] but among the 337 acts of that year, none applying to New York City were private or

[1] New York City Consolidation Act as in Force in 1891. By Mark Ash.

[2] Authorizing the register to appoint a deputy (chapter 58) ; directing the board of assessors to meet annually (chapter 307).

[3] Requiring party walls to be made of brick (chapter 291) ; defining jail liberties to be south of Fourteenth Street (chapter 78).

special in character.[1] In the acts of 1850 no change appears in the legislative practice. The charter amendments are few,[2] while all the remaining 380 laws are general in their nature, or relate to private corporations. So until after 1870, the legislative acts show the same respect for the city charter. The city had rights, which, if not valid in a court of law, were at least supported by custom, and the legislature respected them.[3] But if the Consolidation Act was needed in 1882, and if it was necessary to edit this act again in 1891, then we have indeed strayed far away from former practices.

Though the corruption exposed at the downfall of the Tweed Ring was the excuse for this legislative interference, an impartial study of the rule of Tweed must put upon the legislature much of the responsibility for the plunder and fraud. Not only did the legislature annually confirm every tax levy prepared by the supervisors under the inspiration of Tweed, but by passing special financial acts at his behest, it gave the ring unlimited control over the city's finances. Legislative interference was one of the primary causes of these crimes; but in a hopeful spirit the same action was invoked to prevent a recurrence of the evils. The necessary aid, however, was sought, not in the passage of a charter conforming to the best principles of government, but in further interference in the details of municipal administration.

[1] The legislature then incorporated societies by special act, and there were many such special charters.

[2] Chapter 187 divides the twelfth ward into two wards; chapter 330 authorizes the common council to fix the compensation of police officers and patrolmen; chapter 120 provides for the appointment of fire wardens; chapter 201 relates to the powers of the assistant surrogate; chapter 275 to those of the board of health; chapter 121 to those of the assessors; chapter 329 to those of the governors of the almshouse.

[3] The city's rights were not unlimited. In fact, until 1873 it could not impose taxes locally except by special legislative act. The establishment of the board of estimate and apportionment in the charter of 1873 secured to the city for the first time independent power over its own budget of expenditures. A legislative act, known as the Tax Levy, had always been necessary to confirm the preliminary budget prepared by the supervisors of the city and county.

III.

The laws of 1893 do not differ materially from those of the preceding twenty years, and well illustrate to what a dangerous point this interference has extended. The statute book contains 726 chapters, of which eighty, or more than eleven per cent, refer to New York City. Special legislation for other cities of the state is proportionately as frequent. Of the eighty laws, only eight are in the nature of general acts, amending the form of government of the city. These eight provide for a new armory board;[1] enlarge the powers of the board of health (chapter 187); define more fully the powers of the commissioner of street improvements for the twenty-third and twenty-fourth wards (chapter 443); limit the salaries and the expenses of administration of the board of excise (chapter 271); define the powers of the dock department relative to the city's water front (chapter 397); modify the organization of the department of public parks (chapter 418) and of the police department (chapter 38); and make the corporation counsel a member of the board of estimate and apportionment (chapter 106).

But not even all these acts can fairly be considered general laws; only two of them make a fundamental change in the organization of the city government. The act which creates an armory board and confers on it liberal powers of expenditure, unchecked by the board of estimate and apportionment, and that making the corporation counsel a member of the board of estimate and apportionment, make changes of questionable wisdom, and of sufficient importance to have merited careful deliberation on the part of the city and the citizens whose fundamental law was affected. It is unwise to divide the responsibility for the city's budget, and no public demand existed, nor was any reason urged, for the addition of the

[1] Chapter 559, in conferring upon this body the needed power to erect and enlarge the armories, adds the unwise provision that whatever sums of money the board may determine upon as necessary for their plans, if approved by the commissioner of the sinking fund, "*shall be* assented to by the comptroller in his departmental estimates"; and the board of estimate is *directed* to include the amount in the final tax levy. And yet it is sought to hold the board of estimate responsible for the amount of the budget!

corporation counsel to the board of estimate and apportionment, except that, as the mayor's legal adviser, his opinion was frequently needed. Yet the change vitally alters the composition of the board. It had consisted of four members, of whom three, the mayor, the comptroller and the president of the board of aldermen, were chosen by the people, and only one, the president of the department of taxes and assessments, was appointed by the mayor; by the addition to the board of the corporation counsel, who is named by the mayor, the latter with his two appointees can control this important body against the votes of two officials elected by the people. This board was created by the charter of 1873 after careful deliberation; the financial budget up to that time required an act of the legislature for its confirmation, much doubt existing as to the advisability of conferring so much power on the municipality. There was no provision of the city charter more fundamental than this, and yet it was amended vitally without special reason and without popular demand from the city electors.

Twenty-five of the acts of 1893 were of a private nature, amending charters of charitable and public institutions within the city; authorizing the cancellation of assessments and of sales of property made for non-payment of assessments;[1] releasing certain associations from taxes;[2] and giving authority to the board of estimate and apportionment to pay special claims.[3] Such legislation is very dangerous, and altogether unjustifiable.

The general powers of the board of estimate and apportionment include the right to determine finally the budget for the

[1] Chapter 288 cancels the assessment on the property belonging to St. Joseph's Orphan Asylum; chapter 588 refers to the House of the Good Shepherd, Hebrew Orphan Asylum and St. Luke's Hospital.

[2] Chapter 324 releases from taxes R. C. Church of the Blessed Sacrament; chapter 325, St. Andrew's M. E. Church; chapter 667, Southern N. Y. Baptist Association.

[3] Chapter 649 authorizes the board to examine and pay the claim of Matthew Ellis, arising from the furnishing of bread to the city prison between *January 1, 1885, and January 1, 1886;* chapter 530, to pay Charles S. Walker's salary as janitor of the 10th District Court; chapter 513, to make an additional award to Essie Miller.

city, and this power involves now a sum annually in excess of $30,000,000. Much of this amount, such as the requirements for the interest on the city debt and for the city's quota of state expenditures, cannot be altered by the board. The legislature has, moreover, by special act fixed certain expenditures, such as the salaries of heads of departments and bureaus. Yet the board retains control over at least one-half of the amount annually appropriated — a sum not less than $15,000,000. It should not be necessary to pass special acts authorizing the insertion of certain items in this budget, such as an appropriation of $50,000 additional annually for the Museum of Natural History, on condition of opening on Sundays (chapter 31); or an appropriation of $70,000, on similar conditions, to the Museum of Art (chapter 476); or the sum of $200,000 annually, from 1894 to 1897, for the improvement of parks in the twenty-third and twenty-fourth wards. Such authority is and should be included in the general power of the board of estimate and apportionment; for its control of the many millions of the budget is only rendered more dangerous by dividing the responsibility for all city expenditures with the legislature or any other body.

It is also questionable whether it would not be better to permit the board of estimate and apportionment, or some other local board, to issue city bonds for certain general purposes, and to a limited amount annually. No local board has any authority to issue bonds even for the smallest amount. The control which the board of estimate now has of a budget of many millions, and the additional expenditure of millions annually under legislative acts authorizing the issue of bonds, involve greater financial power than an act authorizing the annual issue of bonds, not in excess of a fixed sum, for public and permanent improvements. Such an authorization would prevent the undertaking of public works except upon action by the local authorities, who would be responsible for them as for any other expenditures. Among the special acts of the legislature in this field in 1893 were those authorizing the enlargement of the Museum of Natural History, and an issue of

$400,000 bonds therefor (chapter 448); providing for the opening of an aquarium in Castle Garden, and an issue of $150,000 bonds therefor (chapter 250); permitting an appropriation of $50,000 for the Columbian celebration, and an issue of bonds therefor (chapter 280); and authorizing the issue of $1,000,000 for new school buildings, and $250,000 for the improvement of the sanitary condition of the school buildings. Not only do such special acts frequently give opportunity for improper expenditure, since the city's officials shift the full responsibility to the state legislature, even though the acts are only permissive, but it is only a short step from permissive to mandatory legislation. And so we find the legislature of 1893 commanding the department of public parks to construct what is known as the Harlem River Speedway, to be paid for by city bonds. This act imposed upon the city, at a cost of several millions, an improvement which had encountered so much opposition that the city officials would not have dared to undertake it under a permissive act of the legislature. By such legislation the citizens are burdened with a permanent public debt, created without their sanction, and even against their will.

Among the local acts of the session under consideration were many dealing with details of administration that are, or should be, within the control of the local officials. Such was the law directing that all sales at public auction shall take place between sunrise and sunset, except under certain conditions (chapter 289); that permitting the transfer of unexpended balances from one bureau to another in the same department (chapter 186); and that authorizing a change of grade in certain streets (chapter 223). If the passage of such acts is necessary, the city government is shorn of its most essential powers. A special law (chapter 517) provides that no contractor repaving the streets may encumber the sidewalks with paving-stones, except under license from the commissioner of public works, and then only for a space not exceeding 800 feet in length, and of a width that will not obstruct the use of the sidewalk by pedestrians. No better example could be found of the interference of the

legislature in petty affairs of local administration; for no one can question the right of the common council to make such an ordinance, or the power of the commissioner of public works himself, by a special clause in the paving contracts, both to make such requirement and to enforce it.

Such interference does not stop at merely unnecessary legislation; it is but one step to unwise and vicious legislation. What can be said in defense of an act which directs the cancellation of assessments, judicially determined by a proper commission, against whom no charges were ever made? Yet a lawyer with political influence, related to an important city official, secured the passage of an act (chapter 526) for the relief of the property-holders to be benefited by the opening of Mulberry Bend Park — an act which was simply a gift of city money by the legislature to certain favored real-estate owners.[1] No less questionable was the act (chapter 267) which ostensibly deals only in a general way with the board of street opening, authorizing it to acquire needed title to open streets in the twenty-third and twenty-fourth wards,[2] but in a subsequent paragraph confers power on the commissioner of public works

to grant a license or privilege to the street sprinkling association [*not printed in capitals*] for the sprinkling of all streets, avenues, roads and public places under his jurisdiction aforesaid, with water from the public supply for a period not exceeding *ten* years, subject to such reasonable rules and regulations and the payment of such annual sum as he may determine, but not less than the amount now received by said city for said privilege.

[1] The newspaper most in sympathy with the political organization that controls the city government thus states the facts in the case: "Michael J. Mulqueen, Mayor Gilroy's son-in-law, and his brother, forming the law firm of Mulqueen & Mulqueen, got the assessed owners for clients and first persuaded the board of estimate and apportionment to cut the sums in half, and afterward succeeded in getting the legislature to repeal that clause of the law. The repeal was passed a year ago, not in the last legislature." — *New York Sun*, June 12, 1894.

[2] The title of this act is: "An act to amend chapter 410 of the laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interest in the City of New York,' relative to the opening of streets, roads and avenues in the twenty-third and twenty-fourth wards and the department of public works of the City of New York."

Acting upon this the commissioner of public works, without any delay, on April 26, 1893, made a contract with the Street Sprinkling Association, giving it the exclusive right to water the streets of New York for a period of ten years (excepting only the streets sprinkled by the park department, and the twenty-third and twenty-fourth wards), for an annual payment of $28,000. A most valuable privilege was thus conferred on a private corporation, and no limit was set to the charges which this company might make on the householders, who must either dispense with street sprinkling or submit to what it may demand. The comment upon this act by one of the New York City newspapers is entirely just:

> Another way by which the tax payers of this city were robbed of money by the last legislature is revealed now in the working of the new Street Sprinkling Law. Heretofore the streets have been sprinkled by a private corporation who bought of the city the right to use the city waters for that purpose over certain districts. As the bidding was competitive, the amount which the city received was increasing each year. On the day that bids for this year's sprinkling were to be opened a bill was passed at Albany which empowers the commissioner of public works to award a contract for ten (10) years for sprinkling the streets to the Street Sprinkling Association, composed of seven contractors who had held sprinkling rights during the last year. This association put in a bid of $28,000 a year for ten years, and their bid was accepted. As this right is said by impartial judges to be worth at least $50,000 this year, and to have a steadily increasing value, the contractors have got an uncommonly "good thing" at the expense of the city.[1]

Of the eighty special local acts under consideration only twenty-four contain any reference to the Consolidation Act of 1882, though most of them, except the private acts, amend it. Such methods add uncertainty to the other evils of legislative interference.

No more need be said to show how far we have strayed from the original conception of a city charter as an act which embodies the city's fundamental law, to be amended only by

[1] *Evening Post*, May 30, 1893.

special reference to the original provisions and after careful deliberation. The modern practice gives the amplest opportunity for the practice of covert fraud. The city officials can frequently with justice charge local misgovernment to the legislature, for that body frequently imposes duties and large expenditures without their consent; and, on the other hand, when they want to accomplish an improper end, they can secure special legislation for the purpose, and thus escape the blame for an act which they are willing to connive at, and yet are not bold enough to commit. Millions can be misappropriated, as in the days of Tweed; or, as in later days, a "speedway" can be secured when city moneys are most needed for parks in overcrowded districts; incompetent officials can be maintained in office, as in the board of electrical control (which should be controlled by experts); or corrupt "deals" may be arranged by relieving property owners from assessments which they should pay, and by giving away valuable franchises for street sprinkling or for street railroads.[1]

No one can speak with greater authority on municipal government than President Seth Low, and he was led to say concerning legislative interference that it was his greatest anxiety while mayor of Brooklyn.

> The charter of a city, coming as it does from the legislature, is entirely within the control of the legislature. Just as there is no legal bar to prevent the legislature from recalling the charter altogether, so there is no feature of the charter so minute that the legislature may not assume to change it.
>
> In the state of New York there is no general law touching the government of cities, and the habit of interference in the details of city action has become to the legislature almost a second nature. In every year of his term the writer was compelled to oppose at Albany — the seat of the state legislature — legislation seeking to make an increase in the pay of policemen and firemen without any reference to the financial ability of the city or the other demands upon the city for the expenditure of money. Efforts were made, also, at one time to legislate out of office some of the officials who

[1] A late conspicuous case of this occurred in connection with what is familiarly known as the "Huckleberry Street Railroad franchise" for the annexed district.

had been appointed in conformity to the charter. New and useless offices were sought to be created, and the mayor found that not the least important of his duties as mayor was to protect the city from universal and adverse legislation on the part of the state.

It is not too much to say, however, that the greatest anxieties of his term sprang from the uncertainties and difficulties of this annual contest — on the one hand to advance the interest of the city, and on the other to save it from harm in its relations to the law-making power of the state.[1]

IV.

Will the proper recognition of the city's privileges and the rights of the citizens better these conditions? The problem of the government of cities has engaged the earnest thought of all public-spirited citizens and students of public law; for it is in the large centers of population in this country and elsewhere that government by the people is at present undergoing its severest trials. Nowhere are the difficulties greater than in New York City. It is the largest city in the Union, with a population in excess of 1,500,000; including Brooklyn and Jersey City, it is a metropolis of more than 2,500,000 people; many of its inhabitants are foreign-born or the offspring of foreign-born; its wealth is almost unlimited, and its budget is larger than that of many a state in the Union: yet since 1821 it has followed the broadest ideas of democracy in its government. The struggles toward good and honest administration which the history of New York City records in this time deserve the careful consideration of the students of municipal government everywhere. Its problems will become the problems of other cities when population increases or democratic institutions are introduced.

This history of New York City since 1821 will show a gradual advance, at least, toward the establishment of public order, and a growing appreciation of the importance of public improvements. Public water supply, public schools, and a well organized police and fire department to replace the volunteer service are characteristic features of this development. But

[1] President Low's chapter in Bryce, American Commonwealth, vol. i, p. 630.

the sad history of the Tweed Ring is too well known to be concealed, and the corruption from time to time exposed by the grand jury or by legislative committees keeps ever before us a picture of brutal dishonesty, which makes many despair of democratic institutions in large cities. In the last decade, however, societies devoted to municipal reform have sprung up in all the larger cities of the Union, and in the past year the City Club of New York has begun an active and vigorous effort to maintain an ideal for the government of great cities. These societies insist — and there have been no differences of opinion among them — that the affairs of a great city involve no political questions, and that they should be administered without regard, therefore, to political considerations. The cleaning, paving and lighting of city streets, the maintenance of public order, the administration of the docks, the development of the public schools, and all other purely local matters should command the attention of citizens without regard to national party affiliations. Differences of opinion in regard to the tariff or the currency should not divide public-spirited citizens on such subjects.

To accomplish this complete separation, the elections for municipal offices should be held at different times from state and national elections; but it is equally important that the city officials, who must be chosen solely for their ability to administer local affairs, should not be interfered with by the state in the discharge of their duties. To prevent legislative interference in the details of administration, these organizations are urging the incorporation of this provision in the state constitution:

No city shall hereafter be incorporated by special law. The legislature shall enact general laws for the organization and government of cities under an appropriate classification, so that cities of the same class shall possess similar powers and be subject to similar restrictions. Cities heretofore incorporated and organized may become organized under such general laws whenever a majority of the electors of any such city voting thereon at any special or general election shall vote in favor thereof; and such general laws shall make provision whereby the question of the organization of any such city

under the general law applicable thereto may from time to time be submitted to the electors therein.

When any city shall have organized under a general law, no law thereafter passed by the legislature for a municipal purpose shall take effect in such city unless the same be accepted and approved by the local authorities thereof. The legislature shall provide by appropriate legislation methods by which a city organized under any general law may amend its charter, subject to the provisions of the constitution.

No law hereafter passed by the legislature for a municipal purpose shall take effect in any city heretofore organized unless the same be accepted and approved by local authorities of such city.

The adoption of such an amendment to the constitution will require a definite understanding of the meaning of the words "municipal purpose" and of the sphere of local and state government. Though it is generally conceded that the cleaning, lighting and paving of streets, the maintenance of the public parks and markets and the prevention and control of fires, for example, are purely local duties, many contend that the maintenance of public order by the police should be a state function, and many more believe that the preservation of the public health and the development of the common school system are state ends and should be within the control of the state legislature. The limit of local and state jurisdiction should be defined, and when once ascertained, interference by special laws should be rendered impossible.

This proposed amendment would reëstablish the city's charter, and coupled, as it would be, with the right of the citizens to choose their own officials, would finally secure to New York City municipal independence. It should be remembered that the saddest experiences of the city date from a time when the state legislature was chargeable with much of the responsibility, and that the experiment of home-rule has never been tried. By it alone can the city government be effectually separated from state and national politics; and all are agreed that this separation is indispensable to the best results in municipal administration. But there can and should be retained an

administrative control over the city's officials. The governor, either with the legislature or with the judges of the highest courts, should have the right to impeach and remove all city officials, as now he has authority to remove the mayor, sheriff and other local officers, for corrupt administration or for failure to perform their public duties;[1] and the state authorities should always have the right to investigate the administration of local affairs. Such a provision, if coupled with the proposed constitutional amendment, would leave supreme control with the state authorities, without interfering with the ordinary administration of municipal affairs by the local officials. The city would finally secure its privileges and the citizens of New York the right to enjoy them. Perhaps a civic pride would be aroused sufficient to induce another United States senator to resign his office in order to fill the more important position of mayor, and the glory of the days of Hamilton, Jay, Varick and DeWitt Clinton might return.

A. C. BERNHEIM.

COLUMBIA COLLEGE.

[1] The constitution of the state provides, article 10, section 1, as follows: "Sheriffs, clerks of counties, including the register and clerk of the City and County of New York, coroners and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. . . . The governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense." In the Laws of 1873, chapter 335 extends the terms of this provision to the office of mayor. The law provides: "The mayor may be removed from office by the governor in the same manner as sheriffs, except that the governor may direct the inquiry provided by law to be conducted by the attorney-general; and after such charges have been received by the governor, he may, pending the investigation, suspend the mayor for a period not exceeding thirty days."